FILE COPY.

Office Supreme Court U. S.
FILED
OCT 22 1904
JAMES H. McKENNEY,
Clerk.

BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

NO. 188.

WILLIAM H. H. GLEASON, PLAINTIFF IN ERROR,

Vs.

EDWARD L. WHITE, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 188.

WILLIAM H. H. GLEASON,
Plaintiff in Error,
Vs.
EDWARD L. WHITE,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

Statement of the Case.

The case involves the true contents of the homestead of William H. Gleason, being Lots 1 and 2 of Section 19, Township 53 South, Range 42 East, on Biscayne Bay, Florida.

The township was surveyed by Geo. Mackey, Deputy Surveyor, and the plat of his survey was approved July 10, 1845. The plat shows Section 19 to be fractional, bounded on the north, west and south by the section lines and on the east by Biscayne Bay. It was divided into two lots by a line running from the half mile post on the west boundary east to the Bay. The north lot was numbered one, and the south two.

William H. Gleason entered, under the homestead law, Lots 1 and 2, Section 19, Township 53 South, Range 42 East, and after his claim had been duly established and consummated, a patent issued to him for these lots "according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General and approved July 10, 1845." According to the plat referred

to and made part of the patent, the land described embraced all of the land in the fractional section, and was bounded on the east by the waters of the Bay. William H. Gleason conveyed all of fractional Section 19 (except ten acres sold Sears) to William H. H. Gleason, the plaintiff in error here.

On February 1, 1875, another plat of this township, based on a survey made by M. A. Williams the previous year, was approved and made official.

According to this plat the distance from the northwest corner of Section 19 east to the Bay is greater than appears by the plat approved in 1845, under which the Gleason patent issued, and the fractional section is subdivided into six lots. Lot 6 corresponds to Lot 2, and Lots 1 to 5 inclusive to Lot 1 of the earlier map. (See plats in record.)

Lot 5, as per the plat of 1875, was patented by the United States to the State of Florida May 4, 1885. (The patent to Gleason covering all of fractional Section 19 bears date of 1878), and the State, by the trustees of the Internal Improvement Fund, made conveyance of this Lot 5 to Edward L. White, the defendant in error, August 20, 1885.

The State had also made selection of Lot 1 as per the later plat, but this was not patented to it by the Government.

White made entry on Lots 1 and 5 (as per plat of 1875), sold part and retained the rest, which Gleason brought ejectment to recover. The plaintiff claimed that the land was a part of Lot 1, as per plat of 1845, and was embraced in the patent to William H. Gleason. The trial was without a jury, and the court found for the plaintiff as to so much of the land as lay in Lot 1, as per plat of 1875, but found the defendant not guilty as to that part situated in Lot 5 (plat of 1875) and judgment followed. This judgment was affirmed per curiam, in the Supreme Court of Florida, and writ of error was taken from this Court.

The Court will note that the judgment is somewhat

peculiar. Plaintiff declared for land in Lot 1 and land in Lot 5, as per survey and plat thereof.

The Court found (see pages 8 and 9 of printed record) for plaintiff as to the land in lot 1, but for the defendant as to that in Lot 5. Exceptions and motion for a new trial were filed by plaintiff, as to the finding for the defendant, and the motion denied. The judgment entered gave the plaintiff only the land in Lot 1, so that he failed to recover the land in Lot 5. It is a final disposition of the case, leaving plaintiff without a part of the land sued for.

There were several other cases involving lands in Lots 1 and 5 (by the later survey) in which plaintiff recovered the lands situated in lot 1, but was denied them in Lot 5. They are retained in the Supreme Court of Florida, upon motions for rehearing, to await the decision in this case.

The patent from the United States to the State for Lot 5 is the only thing which differentiates that lot from Lot 1, as both lots are beyond the meander line of the original survey of 1845.

The jurisdiction of this Court is invoked because plaintiff in error asserted, in the State courts, his right to land in Lot 5, under a patent issued by the United States and the Statutes governing the survey and contents of divisions of the public lands, and this right was denied; and because the rights of the parties also involved a consideration of the swamp land grant of September 28, 1850.

St. Paul & Pa. R. R. Co. v. Schurmeier. 7 Wall 272.

Johnson v. Towsley. 13 Wall 72.

French Glenn Live Stock Co. v. Springer. 22 S. Ct. Rep. 563.

Keen v. Calumet Canal & Imp. Co. 23 S. Ct. Rep. 651.

ERRORS RELIED UPON.

I.

The Court erred in holding that the land in question situated in Lot 5 of Section 19, Township 53 South, Range 42 East, as per survey of 1874, was not conveyed to William H. Gleason, plaintiff's predecessor in the title, by the patent from the United States dated June 24th, 1878, which patent was made in accordance with Gleason's homestead entry, in conformity to the survey and official plat of July 10th, 1845; and in holding that title to said land in said Lot 5 passed to the State of Florida by Tampa patent No. 35, dated May 4th, 1885, through which latter patent defendant claims.

The court found that Lot 1 of the re-survey was embraced in the Gleason patent to Lot 1 of the survey of 1845, although it lies beyond the meander line. By the same principle Lot 5 must also be embraced in that patent. Having granted this land to Gleason in 1878, no title remained in the government to be passed by the later patent to the State.

Stone v. United States. 2 Wall 525.
Hooper v. Scheimer. 23 How. 235.
Johnson v. Towsley. 13 Wall 72.
Gibson v. Chouteau. 13 Wall 92.

II.

The court erred in holding that Lots 1 and 2 of Section 19, Township 53 South, Range 42 East, according to the official plat of July 10, 1845, as patented to William H. Gleason in 1878 did not have a water boundary for their entire length upon the east as shown by said plat, but that the same was bounded upon the east by other land, to-wit, Lot 5, as per the survey of 1874, and that the patent to Gleason did not embrace this land.

The plat by which Gleason made his entry and received his patent showed that he had a water boundary to the entire fractional section on the east. The finding of the State Court gives him a boundary on land (Lot 5) for the south half of the north half of his entry. The rule is that where a section is made fractional by the interference of water an entryman of land shown by the plat to be bounded by the water, takes to the water. This is not a case where the claimant would have to go into another section to reach the water, nor where there is a bayou which may be supposed to be the water meandered, instead of the shore of the bay; but it is a case coming clearly within the rule stated.

Meanders are run to define the general course of the shore and it is not customary to run ordinates from the meander lines to get the exact shore line, in making the government surveys. From this it results that shore lots sometimes contain a considerable excess and sometimes a considerable deficiency of land, as compared with the acreage returned by the surveyors. In the present case the patent was issued after the re-survey had developed the existence of the excess, and the fact that all the land in the fractional section was granted is evidence that the government intended to relinquish any claim it might have to the excess land. Had it been the intention to set aside the survey of 1845 as a fraud on the government, the patent to Gleason would not have been issued in 1878, after the survey of 1874 had exposed the liberality of the first survey in the matter of acreage returned. (The inference is that the patent was based on the survey of 1845 because the homestead entry was made prior to the survey of 1874.)

Harden v. Jordan. 140 U. S. 371.

Mitchell v. Smale. 140 U. S. 406.

Kean v. Calumet Canal & Imp. Co. 23 Sup. Ct. Reporter (W. P. B.) 651.

III & IV.

The Court erred in holding that the patent to William H. Gleason of all of fractional Section 19, said township and range above, was not a decision of the Land Department that the greater part of each lot into which said section was divided by the plat under which the Gleason patent issued, was not swamp and overflowed land, so that no land in said section passed to the State under the Swamp Land Act.

The Court erred in holding that land which appeared to be covered by waters of Biscayne Bay by the official plat in effect September 28, 1850, the date of the swamp land grant, could have been granted by that Act, and in holding that title to the land in controversy in lot 5, as shown by the survey of 1874, passed to the State by the Act of 1850 and was State land at the time of the patent to Gleason, and that the subsequent patent to the State was but a recognition of a title existing in the State since 1850.

The foregoing assignments may be discussed together.

It was argued in the State Courts by the defendant that when the Government patented Lot 5, as per plat of 1875, to the State, this was an adjudication of its swamp character, and as the Act of September 28, 1850 (known as the Swamp Land Act) made a grant of swamp lands in presenti, the title to the lot had really been in the State since September 28, 1850, and the attempt to patent it to Gleason in 1878 was abortive.

The fallacy in the argument is obvious. There was no Lot 5 on September 28, 1850. At that time fractional Section 19 was divided into but two lots, numbered 1 and 2. It was decided by the Land Department that neither of these two lots belonged to the State under the Swamp Land Act, when the patent was issued to Gleason in 1878. The action of the Government in patenting the entire fractional section to Gleason was conclusive as to its non-swamp character.

The department had lost jurisdiction over the matter in 1885 when it attempted to grant Lot 5 to the State.

Titles to lands patented by the Government to private parties, which might by any possibility be classified as swamp, would be very insecure were this position of the defendant tenable.

Brown v. Hitchcock. 19 Sup. Ct. Reporter (W. P. B.) 485.

Rogers Locomotive Machine Works v. American Emigrant Co. 17 Sup. Ct. Rep. 188.

Mich. Land & Lumber Co. v. Rust. 18 Sup. Ct. Rep. 208.

V.

The Court erred in holding invalid the claim of the plaintiff under the Statutes of the United States governing the surveys of the public lands, and the Statutes relating to homestead entries and patents issued thereon to the land in controversy in this suit situated in Lot 5 as shown on the plat of 1874.

Under the Act of February 11, 1805, 2 Statutes at Large 313, Section 2396, U. S. Rev. Stat., Township 53 South, Range 42 East, being made fractional by Biscayne Bay, it was required of the Dept. U. S. Surveyor, that in subdividing it, he should run his section lines to the water. The official plat of 1845 shows that this was done and that fractional Section 19 was bounded east by the bay. The cited Act, in express terms, establishes the boundaries so run as the proper boundaries. (The distance given from the northwest corner of the section to the bay is too short, but the line extends from the section corner to the bay, and the call for distance must give way to the natural boundary.)

Under act of April 5, 1832, 4 Stat. 503 U. S. Rev. Stat. Sec. 2397, and the regulations prescribed by virtue of it, fractional Section 19 was divided into two lots, the first comprising that part of the fractional section lying

north of a line drawn east to the bay, from the half mile post; the other lot comprising the part of the section south of this line.

These two lots were entered as a homestead by Gov. Gleason under the homestead laws and patent followed. Plaintiff sought, in the State courts, to recover a part of the land embraced in Lot 1, as granted, basing his claim upon the patent and laws as to surveys cited. The judgment gave him part, but not all of the land sued for. We conceive that he was entitled to it all.

Geo. M. Robbins.

Counsel ~~Attorney~~ for Plaintiff in Error.